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IN THE

Supreme Court of the United States

OCTOBER TERM, 1960.

No. 582

EUGENE E. CORDAK, d b a A B DENTAL PLATE LABORATORY and ANTHONY J. VOLINO, d b a GRAND & ASHLAND DENTAL LABORATORY,

Appellants,

vs.

THE REUBEN H. DONNELLEY CORPORATION, an Illinois corporation,

Appellee,

and

PEOPLE OF THE STATE OF ILLINOIS, ex rel. ILLINOIS STATE DENTAL SOCIETY, an Illinois corporation not for profit, JAMES C. DONELAN, PAUL W. CLOPPER and JOSEPH S. ZIELINSKI, individually and as officers of the ILLINOIS STATE DENTAL SOCIETY, and ROBERT J. POLLOCK, HERMAN R. WENGER, JOSEPH T. BROPHY, ARTHUR M. DUXLER and FREDERICK D. MOORE, individually and as members of the Joint Commission on Legislation and Law Enforcement of ILLINOIS STATE DENTAL SOCIETY,

Intervenors-Appellees.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS.

STATEMENT AS TO JURISDICTION.

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THE BUNTHORP-WARREN PRINTING COMPANY, CHICAGO

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Intervenors-Appellees.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS.

STATEMENT AS TO JURISDICTION.

Appellants, pursuant to Rules 13 and 15 of the Rules of the Supreme Court of the United States, submit herein their statement disclosing the basis upon which the Supreme Court of the United States has jurisdiction on

appeal to review the final judgment of the Supreme Court of the State of Illinois, and should exercise such jurisdiction in this cause.

OPINION BELOW.

The opinion of the Supreme Court of the State of Illinois is reported in 19 Ill. 2d ....., 169 N. E. 2d 321. A copy of that opinion is attached hereto as Appendix "A". A copy of the order appealed from is attached hereto as Appendix "B".

JURISDICTION.

This appeal is taken from the final judgment of the Supreme Court of the State of Illinois affirming a decree entered by the Superior Court of Cook County, Illinois, finding certain challenged provisions of Section 5a of the Illinois Dental Practice Act, Ill. Rev. Stat., Ch. 91, Sec. 60a (1959), to be constitutional.

This action was brought by appellants for a judgment declaring part of Section 5a of the Illinois Dental Practice Act unconstitutional and void by virtue of its repugnance to the First and Fourteenth Amendments of the Constitution of the United States.

The final judgment appealed from was entered on September 14, 1960. The notice of appeal was filed on October 14, 1960 with the clerk of the Supreme Court of the State of Illinois.

The Supreme Court of the United States has jurisdiction to review by direct appeal the judgment complained of by the provisions of Title 28, United States Code, Sec. 1257(2). Cases believed to sustain this jurisdiction are *Lovell* v. *Griffin*, 303 U. S. 444 (1937); *Standard Oil Co. of California* v. *Johnson*, 316 U. S. 481 (1941); *Illinois* v. *Board of Education*, 333 U. S. 203 (1947); *Winters* v. *New York*, 333 U. S. 507 (1947).

The statute of the State of Illinois involved is the Illinois Dental Practice Act, Volume 2, Ill. Rev. Stat., Ch. 91, Secs. 56a-72h, pp. 556-564 (1959). The particular section of the Dental Practice Act involved is Section 5a (Volume 2, Ill. Rev. Stat., Ch. 91, Sec. 60a, p. 559), the text of which is set forth in Appendix "C."

QUESTIONS PRESENTED.

Whether the provisions of Section 5a of the Illinois Dental Practice Act prohibiting announcements in business and telephone directories which include more than name, address and telephone number and which exceed the number of lines necessary to disclose the same violate the First and Fourteenth Amendments to the United States Constitution in the following respects:

1. They abridge appellants' rights to speak freely within the First Amendment to the United States Constitution;

2. They violate the Fourteenth Amendment to the United States Constitution by depriving appellants of their property without due process of law, and by denying to them the equal protection of the laws.

STATEMENT OF THE CASE.

This action was brought by appellants, dental laboratory technicians. Each is individually engaged in the trade and business of constructing and repairing, extraorally, prosthetic dentures, bridges and other replacements for teeth, commonly known as dental plates. Their complaint for a declaratory judgment challenges the constitutional validity under the Federal Constitution of those provisions of Section 5a of the Illinois Dental Practice Act, Ill. Rev. Stat., Ch. 91, Sec. 60a (1959), which prohibit them from inserting in business and telephone di-

rectories any announcement which includes more than merely name, address and telephone number. (Record, pp. 5-12.) They further seek to enjoin the Reuben H. Donnelley Corporation from refusing to publish their requested announcements in the Chicago Classified Telephone Directory (hereinafter "Chicago Red Book") because of said statutory provision.

Appellant, Eugene E. Cordak, has been a dental laboratory technician since 1953. Appellant, Anthony J. Volino, was engaged, since 1940, as an employee of other dental laboratory technicians. Immediately prior to the filing of this action, he acquired premises and equipment suitable to begin business for himself. His first request, in 1959, for advertising in the Chicago Red Book was refused by The Reuben H. Donnelley Corporation, and but for a temporary injunction entered by the trial court after the complaint was filed requiring the latter to accept his announcement, he would have been unable to utilize the Chicago Red Book to make known effectively and economically, the availability of his services.

The Reuben H. Donnelley Corporation, appellee, prints and publishes the Chicago Red Book. In all issues prior to the 1960 issue of the Chicago Red Book, appellee accepted for publication the announcements contracted for by dental laboratory technicians. Beginning with the 1960 edition of the Chicago Red Book, however, it refused to publish such announcements containing more than name, address and telephone number. Its refusal to do so was based on the fact that an amendment to Section 5a of the Illinois Dental Practice Act prohibited such announcements.

Appellant Cordak's announcement, in addition to containing his name, address and telephone number, also states the number of years he has served the dental pro-

fession, the districts he serves and the fact that he belongs to an Association of Dental Laboratories.

Appellant Volino, in addition to announcing his name, address and telephone number, states only that he offers immediate service and emergency repairs, and that he has served the dental profession for a certain number of years.

The Reuben H. Donnelley Corporation refused to publish these announcements solely on the ground that they violate the Illinois Statute, as amended. (Record, p. 14.)

After issue was joined by appellants' complaint and the answer of The Reuben H. Donnelley Corporation (Record, pp. 16-17), the Illinois State Dental Society and certain dentists (referred to hereinafter as "Intervenors") were given leave to intervene pursuant to an order limiting the issues to be adjudicated to the constitutionality of the challenged provisions of the Dental Practice Act. (Record, pp. 58-59.)

The case was heard by the court sitting without a jury on an agreed statement of facts. (Record, pp. 68-70, 97-104.) The sole question, in the trial court, in the Illinois Supreme Court, and on this appeal, is the validity of the aforementioned provisions of the Dental Practice Act.

On March 21, 1960, the trial court entered its final decree finding the statutory provisions constitutional, dissolving the temporary injunction previously issued and dismissing the complaint for want of equity. (Record, pp. 78-79.) On September 14, 1960, the Illinois Supreme Court affirmed. (Record, pp. 145-152.)

THE QUESTIONS PRESENTED ARE SUBSTANTIAL.

Appellants contend that the First Amendment to the United States Constitution protects their right to advise their lawful customers of all relevant facts about their businesses through printed media of their own selection.

The Illinois Supreme Court has held constitutional a statute enacted by the State Legislature prohibiting advertising by dental laboratories in business and telephone directories. As a result, appellants' business announcements cannot exceed the mere recital of "name, address, telephone number"; moreover, in the words of the statute (Section 5a), their announcements may contain only the number of lines necessary to disclose this "information." An advertisement, however, is but a form of speech, and the right to speak freely is guaranteed under the First Amendment to the United States Constitution. This case presents, therefore, a novel question: Whether in an attempt to regulate professions and related trades under the police power of the State, legitimate businessmen may be totally denied their right to advertise in publications which are, in their judgment, effective and economical media within which they may address themselves to their customers.

Admittedly, when a State undertakes to regulate the business practices of its citizens, it often cannot avoid placing limitations upon pre-existing freedoms. These limitations generally reflect the balance struck between the conflicting interests involved. In the event the regulatory measure adopted goes beyond the necessities of the case, the curtailment of constitutional freedoms cannot be justified. *Washington ex rel. Seattle Title & Trust Co.* v. *Roberts*, 278 U. S. 116, 120 (1928); *Pennsylvania Coal Co.* v. *Mahon*, 260 U. S. 393 (1922); *Eubank* v. *Richmond*, 266 U. S. 137 (1912). See also, *Nebbia* v. *New York*, 291 U. S. 502, 525 (1933).

Insofar as the Dental Practice Act is concerned, the legislative purpose is to prohibit advertising offering services to the public. The statute declares that dental laboratory technicians shall not construct or repair, or offer

to construct or repair, dental appliances for any member of the public. Section 5a prevents the sale of these commodities to anyone except licensed dentists. A violation of these limitations constitutes the practice of dentistry. The scope of the Act indicates clearly that the only justification for the strict limitations on the form, scope and content of advertising by dental laboratory technicians is to effectuate this legislative purpose of prohibiting advertisements to the public. Since, however, the strict prohibitions imposed by Section 5a are considerably broader than the legislative purpose, they cannot be justified by mere reference to the fact that advertising offering services to the public is also condemned. The end has never been held to justify the means. *House* v. *Mayes*, 219 U. S. 270, 282 (1910).

Appellants' advertisements are directed only to licensed members of the dental profession; there is no evidence that either appellant has ever done work for anyone except licensed dentists, or has ever offered to do so. The State Court has in effect held that it is proper to *presume* that appellants seek to offer services to the public merely because they have selected the classified telephone directory as an appropriate media to communicate certain facts about their business.

The Illinois statute creates an irrebutfable presumption that any statement in a telephone directory exceeding name, address and telephone number necessarily constitutes an offer of services to the public. This presumption is inconsistent with reason and logic, and the record so indicates. For example, the statute would prohibit an advertisement that declares in express terms: "SERVING THE DENTAL PROFESSION ONLY". Such an announcement cannot be characterized as one directed at the public; nonetheless, Section 5a prohibits the same. As alleged in their complaint, appellants are prohibited by

Section 5a from advising their customers of such facts as "change of management, change in name, former location, hours of business, speed and efficiency of service, number of years in business, experience of personnel, type of materials used and the like."

There are numerous listings in the classified directory which are directed at limited audiences. To take only a few examples, it is manifest that advertising of hospital supplies or dental equipment does not constitute an offer to deal indiscriminately with the public in violation of applicable regulations. The mere fact that the general public may read announcements pertaining to dental supplies does not indicate that the advertiser intends to offer these supplies for sale to anyone except the licensed dentist. Nor does the fact that druggists place announcements in the Chicago Red Book indicate that they will sell drugs indiscriminately to the public in violation of law. There is always a possibility that an advertiser will subsequently act improperly, but such a possibility does not warrant a prior restraint on his freedom of communication.

The challenged statute imposes a broad prior restraint on appellants' freedom to communicate with their customers and potential customers. This broad impairment of the right of free speech is inconsistent with this Court's uniform respect for, and interpretation of, the First Amendment.

This Court has not heretofore delineated the scope of the businessman's right to advertise in media of his own choosing. The problem involved in this case is of fundamental importance not only to appellants, but also to the entire business community and involves the individual liberty of every citizen.

WHEREFORE, it is respectfully submitted that this Court has jurisdiction of this appeal under Title 28, United States Code, Section 1257(2), and should exercise such jurisdiction in this cause.

Respectfully submitted,

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Chicago 3, Illinois,
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APPENDIX "A".

EUGENE E. CORDAK, d b a A B-DENTAL PLATE LABORATORY *et al.*,

Appellants,

vs.

REUBEN H. DONNELLEY CORPORATION,

Appellee

(People *ex rel.* Illinois State Dental Society *et al.*, *Intervenors-Appellees.*)

No. 35874.

Supreme Court of Illinois.

Sept. 14, 1960.

Bristow, *Justice.*

Plaintiffs, as dental laboratory technicians, appeal directly to this court from a decree of the superior court of Cook County finding the 1959 amendment to section 5a of the Dental Practice Act (Ill. Rev. Stat. 1959, Chap. 91, par. 60a) to be constitutional, dissolving the temporary injunction previously issued and dismissing plaintiffs' complaint for want of equity.

Since the constitutional validity of the above-referred-to amendment to section 5a of the Illinois Dental Practice Act is directly involved in this case, the appeal is properly taken direct to this court. Ill. Rev. Stat. 1959, Chap. 110, par. 75(1).

There is no dispute as to the facts involved in this case and the issues presented are solely matters of law. Plain-

tiffs are each dental laboratory technicians, each engaged in their own trade and business of constructing and repairing, extraorally, prosthetic dentures, bridges, and other replacements for teeth or parts thereof. In June, 1959, plaintiff Cordak, d b a A B Dental Plate Laboratory, placed his order for directory representation in the 1960 edition of the Chicago Classified Telephone Directory published by the defendant, Donnelley Corporation, commonly called the "Red Book", which advertisement read as follows:

"A B Dental Plate Labtry
Logan Square
District
A. B. CA 7-4060
2715½ N. Milwaukee
Lakeview District
DI 8-5053
1932½ W Irving Pk ..... DIversey 8-5053
2715½ N Milw ..... CApitol 7-4060"

In September of 1959 the other plaintiff, d b a Grand & Ashland Dental Laboratory, placed an order with the defendant for publication in the Chicago Red Book of an announcement reading as follows:

"Grand & Ashland Dental Laboratory
Emergency Plate Repairs
Immediate Service
1609 W. Grand Ave.
Serving the Dental Profession since 1940
1609 W. Grand Ave. ..... CAnal 6-0678"

The defendant Donnelley Corporation refused and declined to print and publish each of said announcements so ordered by the plaintiffs, solely and entirely on the basis of the 1959 amendment to section 5a of the Illinois Dental Practice Act. Prior to such 1959 amendment the defendant Donnelley Corporation had accepted for publication

the announcements contracted for by these plaintiffs as well as other dental laboratory technicians. Its refusal to publish the announcements above referred to is based on the fact that they contained more than name address and telephone number of the dental technician.

Plaintiffs thereupon filed a complaint for declaratory judgment that the 1959 amendment to the Dental Practice Act was unconstitutional and void and further seeking to enjoin the defendant Donnelley Corporation from refusing to publish their announcements because of such amendment. A temporary injunction, after notice, was issued restraining the defendant Donnelley Corporation from refusing to publish plaintiffs' announcements in the 1960 Chicago Red Book. The Illinois State Dental Society and certain dentists, hereinafter referred to as intervenors, were given leave to intervene pursuant to an order limiting the issues to be adjudicated to the constitutionality of said amendment. The case was heard by the trial court sitting without a jury on an agreed statement of facts. The trial court in its decree found the amendment constitutional, dissolved the temporary injunction previously issued and dismissed plaintiffs' complaint for want of equity.

Plaintiffs in their complaint and in this court contend that the prohibition against advertising contained in the 1959 amendment to the Illinois Dental Practice Act violates both the United States constitution and the constitution of the State of Illinois in the following respects:

A. That it is an abridgement of the plaintiffs' right to speak freely within the first amendment to the United States constitution and deprives plaintiffs of the right freely to speak, write and publish on all subjects in violation of article II, section 4, of the Illinois constitution, S. H. A.

B. That it violates the fourteenth amendment to the

United States constitution by depriving plaintiffs of their property without due process of law and by depriving them of equal protection of the law, and that it violates article II, section 2, of the Illinois constitution because:

1. It is arbitrary, capricious and unreasonable;

2. There is no relation to the evil sought to be remedied;

3. It prevents plaintiffs from informing their customers of the nature and description of methods used and of qualifications of plaintiffs;

4. It prevents plaintiffs from informing customers of important matters such as change of management, change of name, former location, hours of business, speed and efficiency of service, number of years in business, experience of personnel, type of materials used, and the like;

5. It is an attempt to regulate phases of plaintiffs' business not connected with the practice of dentistry;

6. It prevents plaintiffs from specifying the types of customers with whom they are prepared to do business and from specifying that their announcements are directed only to lawful customers and not to members of the public.

C. That it impairs plaintiffs' right to freely contract to carry out legitimate functions of their business, in violation of article I, section 10, of the United States constitution and article II, section 14, of the Illinois constitution.

The brief of defendant Donnelley Corporation limits itself to urging this court to give careful consideration to any law or regulation, however beneficial its purpose, which tends to impair the freedom of contract and the right of freedom of speech.

The intervenor's position is that the 1959 amendment in question is a valid exercise of the State's police powers.

The 1959 amendment to section 5a of the Illinois Dental Practice Act which is at issue in this litigation provides: "Announcements in business and telephone directories shall be limited to name, address and telephone number, and shall not occupy more than the number of lines necessary to disclose such information."

In order to properly consider the issues in this case, it is necessary to consider section 5a, as amended, as a whole and it reads as follows:

> "5a. Licensed dentists may employ or engage the services of any person, firm or corporation to construct or repair, extraorally, prosthetic dentures, bridges, or other replacements for a part of a tooth, a tooth, or teeth. A person, firm or corporation, so employed or engaged, when constructing or repairing such dentures, bridges or replacements, exclusively, directly and solely for licensed members of the dental profession, and not for the public or any part thereof, shall not be deemed or considered to be practicing dentistry as defined in this Act. However, it is unlawful for persons, firms or corporations so employed or engaged, to advertise in any manner the appliances constructed or repaired, or the services rendered in the construction, repair or alteration thereof, except, that persons, firms or corporations so employed may announce in trade journals and professional publications which circulate among members of the dental profession, their names, the locations or places of their business, their office hours, telephone numbers, and the fact that they are engaged in the construction, reproduction or repair of such appliances, together with such display advertisements as disclose the character and application of their work, and persons, firms or corporations so employed or engaged may furnish to licensed information regarding their products, materials, uses and prices therefor. Announcement may also be made by business card, in

business and telephone directories, and by signs located upon the premises wherein the place of business is situated, but announcements made by business card or in business and telephone directories and signs shall not contain any amount as a price or fee for the services rendered, or to be rendered, or for any material or materials used or to be used, or any picture or other reproduction of a human head, mouth, dentures or specimen of dental work or any other media calling attention of the public to their business. *Announcements in business and telephone directories shall be limited to name, address and telephone number, and shall not occupy more than the number of lines necessary to disclose such information.* The lettering on signs shall be no more than 7 inches in height and no illuminated or glaring light signs shall be used." (Italicized sentence is the amendatory portion here in issue.)

Plaintiffs do not question the right of the State to enact laws regulating their business activities (*Winberry* v. *Hallihan*, 361 Ill. 121, 197 N. E. 552) and they recognize that pursuant to such right the legislature may also prohibit advertising which offers services to the public. *People ex rel. Chicago Dental Society* v. *A. A. A. Dental Laboratories, Inc.*, 8 Ill. 2d 330, 134 N. E. 2d 285; *Lasdon* v. *Hallihan*, 377 Ill. 187, 36 N. E. 2d 227.

The principal argument of plaintiffs is that the police power of the State in the present instance extends only to the right of prohibiting advertising by dental laboratory technicians which offers their services to the public, that the 1959 amendment to section 5a arbitrarily and capriciously defines and limits the plaintiffs' right to advertising without any logical or rational relation to whether such advertisement offers services to the public, all in violation of plaintiffs' constitutional rights. In other words, plaintiffs' position is that the amendment has no reasonable relation to the protection of public health.

In our opinion, the decision of this court in *People ex rel. Chicago Dental Society* v. *A. A. A. Dental Laboratories, Inc.*, 8 Ill. 2d 330, 134 N. E. 2d 285, and the cases discussed therein are conclusive as to this case. In the *A. A. A. Dental Laboratories* case the validity of the section limiting the advertising was directly challenged. In that case we specifically held that certain defendant dental laboratory technicians were properly enjoined from advertising in telephone directories, by window posters, and by public display of specimen dentures and from dealing directly with the public. One of the defendants in the case had been advertising in the Chicago Red Book, and in the opinion the nature of the advertisement is set forth in detail. The opinion also refers to other advertising done by such defendant, such as exhibition of photographs of specimen dentures, advertising in religious publications and in a theater. The master in that case had found that such technician was not violating the provision relating to advertising or announcements because section 5a contained no limits on the size of announcements which could be made in a telephone directory. This court noted that all of the forms of advertising engaged in by such technician were clearly prohibited by the statute with the exception of the use of the telephone directory, and that as to telephone directories the statute permitted an announcement by business card. The trial court decree in respect to this particular type of advertising was reversed with directions to grant the injunctive relief sought and we there said, 8 Ill. 2d at page 339, 134 N. E. 2d at page 291 "* * * the one-quarter page display advertisements referred to in the master's report and the decree amount to a 'media calling attention of the public to their business,' which is prohibited, rather than a 'business announcement' which is permitted. * * * While there is no evidence showing that this defendant dealt directly with the public, his advertising activities clearly

show a purpose to do so, and in our opinion justify a decree restraining him from dealing directly with the public."

We have carefully examined the evidence introduced in this case, particularly the two and one-half pages from the Chicago Red Book containing the advertising of dental laboratories. It is apparent that the display advertising here in issue is substantially of the same size and content and nature as was in issue as to numerous defendant laboratories in the A. A. A. Dental Laboratories case. The fact that plaintiffs are seeking to force the publisher of the classified telephone directory to accept display advertising of substantially the same size and content as was involved in the prior case, subsequent to the decision therein, is a rather clear and convincing demonstration that the General Assembly in 1959 had a reasonable basis for enacting the amendment in question. Section 5a of the Illinois Dental Practice Act, taken as a whole, very carefully protects the right of dental laboratories to advertise their products and services to licensed dentists who are their only lawful customers. The section, first of all, absolutely prohibits any kind of advertising but thereafter excepts from such prohibition announcements in trade journals and professional publications circulated among members of the dental profession. Such exception permits not only advertisements in such journals and publications of the technician's name, location, place of business, office hours, telephone number, and the nature of the business in which he is engaged, but also authorizes display advertisements as to the character and application of their work and the products, materials, uses and prices therefor. The statute also permits announcement by business card in business and telephone directories and by signs located upon the premises where the business is situated, provided such announcements are limited as to size and contain nothing as to price or fees or any pictures "or any other media calling attention of the

public to their business." At this point the 1959 amendment added the restriction of announcements in business and telephone directories to name, address and telephone number.

From a thorough consideration of the evidence in this case, the statute in question as a whole, and prior decisions of this court, we are of the opinion that the display advertisements in the Chicago Red Book here in issue are equivalent to the use of a "media calling attention of the public" to the technician's business and that the legislature was acting within the proper limits of its police power in adopting the 1959 amendment here in question which spells out in further detail the "business card" which is permitted. The act, as a whole, provides dental laboratories wide latitude in lawfully advertising their services and products to the dental profession, the class which they may lawfully serve, and this decision is amply supported by numerous decisions by the court in addition to the A. A. A. Dental Laboratories case. *Winberry* v. *Hallihan*, 361 Ill. 121, 197 N. E. 552; *People* v. *Dubin*, 367 Ill. 229, 10 N. E. 2d 809; *Lasdon* v. *Hallihan*, 377 Ill. 187; *Roberts Optical Co.* v. *Department of Registration and Education*, 4 Ill. 2d 290, 122 N. E. 2d 824. Several decisions of the United States Supreme Court pertaining to similar and related statutes likewise establish that the 1959 amendment here in question does not violate plaintiff's rights or deprive them of privileges under the United States constitution. *Semler* v. *Oregon State Board of Dental Examiners*, 294 U. S. 608, 55 S. Ct. 570, 79 L. Ed. 1086; *Williamson* v. *Lee Optical of Oklahoma*, 348 U. S. 483, 75 S. Ct. 461, 99 L. Ed. 563. The same authorities support the conclusion that the exercise of its police power by the legislature in adopting the amendment here in question does not arbitrarily or capriciously curtail the right of contract of the parties. None of the judicial precedents from other jurisdictions discussed by

the plaintiffs pass on a factual or legislative situation analogous to that here presented and, therefore, are not decisive or persuasive of the issues before us.

The 1959 amendment being a reasonable and constitutional exercise of the legislature's right to prohibit or limit advertising by dental laboratory technicians who offer services to the public, the decree of the trial court is affirmed.

Decree affirmed.

APPENDIX "B".

UNITED STATES OF AMERICA.

STATE OF ILLINOIS, }
SUPREME COURT. } ss.

AT A TERM OF THE SUPREME COURT, begun and held in Springfield, on Monday, the twelfth day of September in the year of our Lord, one thousand nine hundred and sixty, within and for the State of Illinois.

Present: Walter V. Schaefer, Chief Justice.
Justice Joseph E. Daily
Justice Harry B. Hershey
Justice Byron O. House
Justice George W. Bristow
Justice Ray I. Klingbiel
Justice Roy J. Solfisburg, Jr.
William L. Guild, Attorney General
Robert G. Miley, Marshal

Attest: Mrs. Earle Benjamin Searcy, Clerk

BE IT REMEMBERED, that, to-wit: on the 14th day of September, A. D. 1960, the same being one of the days of the Term of Court aforesaid, the following proceedings were, by said Court, had and entered of record, to-wit:

Eugene E. Cordak, d/b/a A B Dental Plate Laboratory and Anthony J. Volino, d/b/a Grand & Ashland Dental Laboratory,
Appellants,
No. 35874 *vs.*
The Reuben H. Donnelley Corporation, an Illinois corporation,
Appellee,
People of the State of Illinois, ex rel. Illinois State Dental Society, an Illinois corporation not for profit, James C. Donelan, Paul W. Clopper and Joseph B. Zielinski, individually and as officers of the Illinois State Dental Society, and Robert J. Pollock, Herman R. Wenger, Joseph T. Brophy, Arthur M. Duxler and Frederick D. Moore, individually, and as members of the Joint Commission on Legislation and Law Enforcement of Illinois State Dental Society,
Appellees.

Appeal from Superior Court Cook County 59 S 17029

And now, on this day, this cause having been argued by counsel, and the Court, having diligently examined and inspected as well the record and proceedings aforesaid, as matters and things therein assigned for error, and now, being sufficiently advised of and concerning the premises for that it appears to the Court now here, that neither in the record and proceedings aforesaid, nor, in the rendition of the decree aforesaid, is there anything erroneous, vicious or defective, and in that record there is no error.

THEREFORE, it is considered by the Court that the decree of the Superior Court of Cook County aforesaid, BE AFFIRMED IN ALL THINGS AND STAND IN FULL FORCE AND EFFECT,

notwithstanding the said matter and things therein assigned for error.

And it is further considered by the Court that the said appellees recover of and from the said appellants costs by them in this behalf expended, to be taxed, and that they have execution therefor.

I, MRS. EARLE BENJAMIN SEARCY, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the Seal of said Court this 4th day of October, A. D. 1960.

/s/ MRS. EARLE BENJAMIN SEARCY,
(SEAL) *Clerk, Supreme Court of the State of Illinois.*

APPENDIX "C".

Section 5a of the Dental Practice Act, *Ill. Rev. Stat.*, Chapter 91, Section 60a (1959), provides as follows:

"Sec. 5a. Licensed dentists may employ or engage the service of any person, firm or corporation to construct or repair, extraorally, prosthetic dentures, bridges, or other replacements for a part of a tooth, a tooth, or teeth. A person, firm or corporation, so employed or engaged, when constructing or repairing such dentures, bridges or replacements, exclusively, directly and solely for licensed members of the dental profession, and not for the public or any part thereof, shall not be deemed or considered to be practicing dentistry as defined in this Act. However, it is unlawful for persons, firms or corporations so employed or engaged, to advertise in any manner the appliances constructed or repaired, or the services rendered in the construction, repair, or alteration thereof, except, that persons, firms, or corporations so employed may announce in trade journals and professional publications which circulate among members of the dental profession, their names, the locations or places of their business, their office hours, telephone numbers, and the fact that they are engaged in the construction, reproduction or repair of such appliances, together with such display advertisements as disclose the character and application of their work, and persons, firms or corporations so employed or engaged may furnish to licensed dentists information regarding their products, materials, uses and prices therefor. Announcement may also be made by business card, in business and telephone directories, and by signs located upon the premises wherein the place of business is situated, but announcements made by business card or in business and telephone directories and signs shall not contain any amount as a price or fee for the services rendered, or to be rendered, or for any material

or materials used or to be used, or any picture or reproduction of a human head, mouth, denture or specimen of dental work or any other media calling attention of the public to their business. Announcements in business and telephone directories shall be limited to name, address and telephone number, and shall not occupy more than the number of lines necessary to disclose such information. The lettering on signs shall be no more than 7 inches in height and no illuminated or glaring light signs shall be used."

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JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1960.

No. 582

EUGENE E. CORDAK, D/B/A A B DENTAL PLATE LABORATORY AND ANTHONY J. VOLINO, D/B/A GRAND & ASHLAND DENTAL LABORATORY,

Appellants,

vs.

THE REUBEN H. DONNELLEY CORPORATION, AN ILLINOIS CORPORATION, *Appellee,*

AND

PEOPLE OF THE STATE OF ILLINOIS, EX REL., ILLINOIS STATE DENTAL SOCIETY, AN ILLINOIS CORPORATION NOT FOR PROFIT, JAMES C. DONELAN, PAUL W. CLOPPER AND JOSEPH B. ZIELINSKI, INDIVIDUALLY AND AS OFFICERS OF THE ILLINOIS STATE DENTAL SOCIETY, AND ROBERT J. POLLOCK, HERMAN R. WENGER, JOSEPH T. BROPHY, ARTHUR M. DUXLER AND FREDERICK D. MOORE, INDIVIDUALLY AND AS MEMBERS OF THE JOINT COMMISSION ON LEGISLATION AND LAW ENFORCEMENT OF ILLINOIS STATE DENTAL SOCIETY, *Intervenors-Appellees.*

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS.

MOTION BY APPELLEES TO DISMISS APPEAL OR TO AFFIRM JUDGMENT.

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Intervenors-Appellees.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS.

MOTION BY APPELLEES TO DISMISS APPEAL OR TO AFFIRM JUDGMENT.

May It Please The Court:

Now come People of the State of Illinois, ex rel. Illinois State Dental Society, et al., Appellees, by their attorneys,

Owen Rali and John R. Porter, and move that the appeal in the above entitled cause be dismissed or, in the alternative, that the judgment of the Supreme Court of Illinois be affirmed, for the reason that the appeal does not present a substantial Federal question.

I.

THE FEDERAL QUESTION WAS PROPERLY PRESERVED.

While the Appellants properly preserved their contention as to the unconstitutionality of the 1959 amendment to Section 5a of the Illinois Dental Practice Act, under the Federal Constitution, we contend that no substantial Federal question is here presented in view of the prior decisions of this court substaining the validity of similar statutes under which the police power of a state has been exercised to protect public health. Hence, we make the above motion.

II.

FACTS RELEVANT TO THE APPEAL SHOW THIS STATUTE TO BE A PROPER PUBLIC HEALTH MEASURE.

Protection of public health by reasonable exercise of the police power of the state is the fundamental premise of the Illinois Dental Practice Act. The Act follows a time-tested and almost universally recognized pattern of subjecting a profession to licensing and regulation because the services rendered by the dental profession so directly relate to the health and welfare of the people that regulation is deemed necessary to protect the public health.

Unlike legislation dealing with ordinary trades, the statute in question places responsibility squarely on the dental profession and at the same time, in the public interest, assures the maintenance of a strong profession by protecting the dental profession from commercialization and exploitation.

The Chicago Red Book classified telephone directory (commonly referred to as the "Chicago Red Book") is what its name implies, a telephone directory in which listings and advertising are carried under certain classifications, one of which is that of "Dental Laboratories". This directory is provided to all telephone subscribers and is used by the public generally. The advertisment of Appellant Cordak is shown at the top of column three of one of the pages from the 1960 edition of the Chicago Red Book (9th page of telephone directory exhibits in the Record) under the name A B Dental Plate Laboratory, and that of Appellant Volino is shown at the top of the fourth column of a similar page from the 1960 Chicago Red Book, under the name of Grand & Ashland Dental Laboratory (10th page of telephone directory exhibits in the Record).

Appellants concede that the State of Illinois may prohibit dental laboratory technicians from advertising their goods and services to the public but refuse to recognize that the Chicago Red Book, which admittedly is circulated among the public, is an instrumentality which calls attention of the public to their business. Appellants also refuse to recognize the public health aspects of prosthetic dentistry and the advertising thereof to the public, and they further refuse to recognize that ample provision is made in the Illinois Dental Practice Act for their advertising directly to their only lawful customers—members of the dental profession. The validity of the 1959 amendment to Section 5a of the Illinois Dental Practice Act is here challenged because Appellants desire to continue display advertising in a medium that reaches the public.

(a) Statutory Prohibition of This Kind of Advertising Was Upheld by the Supreme Court of Illinois in 1956 and Review Was Denied by This Court.

In *People ex rel. Chicago Dental Society* v. *A. A. A. Dental Laboratories*, 8 Ill. 2d 330, 134 N. E. 2d 285 (1956), the court stated, at page 335:

> "Advertising by dentists is severely restricted. The record in this case shows that many of the defendant technicians have by persistent and blatant advertising sought to deal directly with the public, and that control of dental patronage has thus come into the hands of laboratory technicians who have directed it to such dentists as they saw fit. Prohibition of direct dealing between the makers of dentures and the public may thus be thought desirable to avoid the danger that the profession of dentistry may become 'subservient to the business of those engaged in the making of plates.' *Lasdon* v. *Hallihan*, 377 Ill. 187, 195."

And at page 338:

> "Defendants also attack the validity of sections 5(a) and 18(b) of the act (Ill. Rev. Stat. 1955, chap. 91, pars. 60(a), 72(b), which limit the type of advertising which may be done by those who are subject to the act. The objection is not directed to any of the specific restrictions which the act contains. Rather it appears to be based upon the assumption that the General Assembly is without power to restrict in any way the advertising of dental laboratory technicians. The contrary has been squarely held. *Lasdon* v. *Hallihan*, 377 Ill. 187, 194; *Winberry* v. *Hallihan*, 361 Ill. 121; see also *Perlow* v. *Board of Dental Examiners*, 332 Mass. 682, 127 N. E. 2d 306; cf. *Williamson* v. *Lee Optical of Oklahoma, Inc.*, 348 U. S. 483; *Klein* v. *Department of Registration and Education*, 412 Ill. 75; *Roberts Optical Co.* v. *Department of Registration and Education*, 4 Ill. 2d 290."

Review of the above cited *Chicago Dental Society* case was

denied by this court on October 15, 1956, 352 U. S. 863, and petition for rehearing was denied on November 19, 1956, 352 U. S. 919.

The Supreme Court of Illinois said in its opinion in the instant case (appellants' Jurisdictional Statement, p. 17; *Cordak* v. *Reuben H. Donnelley Corp.*, 20 Ill. 2d 153, 160, 169 N. E. 2d 321, 324 [1960]):

> "In our opinion, the decision of this court in *People ex rel. Chicago Dental Society* v. *A. A. A. Dental Laboratories, Inc.*, 8 Ill. 2d 330, 134 N. E. 2d 285, and the cases discussed therein are conclusive as to this case. In the *A. A. A. Dental Laboratories* case the validity of the section limiting the advertising was directly challenged. In that case we specifically held that certain defendant dental laboratory technicians were properly enjoined from advertising in telephone directories, by window posters, and by public display of specimen dentures and from dealing directly with the public." * * *

And also stated (Appellants' Jurisdictional Statement, p. 18):

> "We have carefully examined the evidence introduced in this case, particularly the two and one-half pages from the Chicago Red Book containing the advertising of dental laboratories. It is apparent that the display advertising here in issue is substantially of the same size and content and nature as was in issue as to numerous defendant laboratories in the *A. A. A. Dental Laboratories* case."

(b) The 1959 Amendment to Section 5a of the Illinois Dental Practice Act Was Reasonably Necessary to Bring About Compliance With the Previous Court Decisions.

Despite the decision of the Supreme Court of Illinois in 1956 in the *Chicago Dental Society* case, certain dental laboratories continued to purchase display advertising in the Chicago Red Book. As stated by Appellants, in all

poration accepted for publication in the Chicago Red Book issues prior to that of 1960, The Reuben H. Donnelley Corthe announcements contracted for by dental laboratory technicians (Appellants' Jurisdictional Statement, p. 4).

For this reason, the General Assembly of Illinois, in 1959, amended Section 5a of the Illinois Dental Practice Act by placing a specific limitation on the content of announcements which dental laboratories could make in business and telephone directories, as follows:

> "Announcements in business and telephone directories shall be limited to name, address and telephone number, and shall not occupy more than the number of lines necessary to disclose such information". (Ill. Rev. Stats., 1959, Ch. 91, Par. 60a; Appellants' Jurisdictional Statement, Appendix "C", p. 24).

The question is whether the above amendment was a reasonable exercise of the police power of the State for the protection of public health and welfare. Appellants seem to contend that the amendment has no reasonable relation to the protection of public health.

The answer to this argument is found in the opinion of the Supreme Court of Illinois in this case, as follows:

> "The fact that plaintiffs are seeking to force the publisher of the classified telephone directory to accept display advertising of substantially the same size and content as was involved in the prior case, subsequent to the decision therein, is a rather clear and convincing demonstration that the General Assembly in 1959 had a reasonable basis for enacting the amendment in question." (Appellants' Jurisdictional Statement, Appendix "A", p. 18.)

(c) There Is No Evidence That Appellants Tried to Advertise in Trade Journals and Professional Publications Circulated Among Their Only Legitimate Customers—Licensed Dentists.

Under Section 5a of the Illinois Dental Practice Act, the only lawful market for the goods and services of a dental laboratory is the dental profession itself. It is only when the laboratory does its work "exclusively, directly, and solely for licensed members of the dental profession, and not for the public or any part thereof", that the laboratory shall not be deemed or considered to be practicing dentistry within the meaning of the Act. (Appellants' Jurisdictional Statement, p. 24.)

Yet, no evidence was offered by Appellants to show that they advertised in any trade journal or professional publication. They seek to force their way into a directory that is given general circulation among the public. This would clearly indicate that their target is the general public and not the dental profession.

Since the Illinois statute prohibits dental laboratories from dealing directly with the public but permits them to deal only with the dental profession, it is only reasonable and proper that the advertising by dental laboratories should be limited largely to those professional publications which circulate among licensed dentists. Certainly it is not unreasonable to prohibit a person from advertising his services among those persons, the general public, with whom he is not lawfully permitted to do business.

Advertising by laymen to the public for dental patronage enables the advertiser to steer such patronage to dentists of his own choice or to attempt to render the dental service himself and in either case the effect is detrimental to public health.

The usual dentist-patient relationship cannot exist if the dentist is subservient to a commercial advertiser for obtaining his practice. He would be compelled to accept as little or as much business as the laboratory owner desired to give him. Professional responsibility would be destroyed. This undesirable result is one which the State of Illinois properly seeks to prevent by the statutory provision here challenged.

III.

THE FEDERAL QUESTION HEREIN IS NOT A SUBSTANTIAL ONE.

The Appellants have misstated the effect of the Illinois Statute, have relied upon cases involving ordinances or statutes not relating to the field of public health, and have failed to distinguish cases in this court which sustained the Illinois statute here involved as a public health measure well within the legislative competence of the State of Illinois.

(a) The Illinois Dental Practice Act Carefully Safeguards the Rights of Dental Laboratory Technicians to Advertise Their Goods and Services to Their Only Lawful Customers—Licensed Dentists.

Section 5a of the Illinois Dental Practice Act (Ill. Rev. Stats., 1959, Chap. 91, Par. 60(a)), very carefully protects the right of dental laboratories to advertise their products and services to their only lawful customers, licensed dentists.

First, there is an absolute prohibition against any kind of advertising. Referring to dental laboratories that deal only with licensed dentists it is provided:

> "However, it is unlawful for persons, firms or corporations so employed or engaged, to advertise *in any manner* the appliances constructed or repaired, or the services rendered in the construction, repair or alteration thereof * * *." (Emphasis ours.)

There follow certain exceptions to this prohibition. First it is provided that such persons, firms, or corporations:

> "* * * may announce in trade journals and professional publications which circulate among members of the dental profession, their names, the locations or places of their business, their office hours, telephone numbers, and the fact that they are engaged in the construction, reproduction or repair of such appliances, together with such display advertisements as disclose the character and application of their work, and persons, firms or corporations so employed or engaged may furnish to licensed dentists information regarding their products, materials, uses and prices therefor."

Certainly this gives dental laboratories a wide range of advertising possibilities among their lawful customers. It includes all types of direct mail solicitation, circulars, calendars, memorandum pads, display advertising in dental society journals, et cetera.

There is no contention by appellants that this part of the statute is too restrictive or unreasonable. In fact, appellants make no mention of it.

The statute also contains other exceptions to the advertising prohibition. It provides:

> "Announcement may also be made by business card, in business and telephone directories, and by signs located upon the premises wherein the place of business is situated * * *."

There follow certain limitations upon the size and character of such announcements. They must not contain any amount as to prices or fees. They must not contain pictures of the human head, mouth or specimen denture, "*or any other media calling attention of the public to their business.*" (Emphasis ours.)

It is at this point that the 1959 amendment was added, restricting announcements in business and telephone directories to name, address, and telephone number.

Appellants agree that the legislative purpose is to prohibit advertising which offers services to the public. (Appellants' Jurisdictional Statement, p. 6). Also, Appellants do not challenge the power of the General Assembly to prohibit advertising by dental laboratories to the public. (See opinion of the Supreme Court of Illinois—Appellants' Jurisdictional Statement, p. 16.) It is only logical that such power would carry with it the right to define what is intended to be prohibited.

It is well to note that Appellants have not even elleged that their advertising is directed to licensed dentists only and not to the public. In fact, Appellants amended their Complaint by striking out such allegations. This is of the utmost significance in this case. If Appellants' advertising is directed only to the dental profession, why did they amend their Complaint as above indicated?

Appellants argue that their advertising might contain words such as "Serving The Dental Profession Only" and that such announcement cannot be characterized as one directed at the public. (Appellants' Jurisdictional Statement, p. 7.) A large number of the advertisements of the 34 original defendants in *People ex rel. Chicago Dental Society et al.* v. *A. A. A. Dental Laboratories, Inc., et al.*, 8 Ill. 2d 330, contained the same or similar language. The Supreme Court of Illinois rightly held that such statements in dental laboratory advertising do not purify what would otherwise be an unlawful advertisment.

Appellants suggest that other classifications of advertising in a telephone directory are pointed to limited audiences and mention hospital supplies, dental equipment and druggists. (Appellants' Jurisdictional Statement, p. 8.) The analogy is not sound. No law prevents a layman from purchasing a hospital bed, a dental chair or many things which are sold in drug stores. But when a layman tries to *use* such equipment in practicing medicine, dentistry, or

pharmacy directly with the public without being licensed to do so, and, in addition, advertises his services to the public, he then violates public health laws similar to the statute here in question.

Since Section 5a of the Illinois Dental Practice Act makes ample provision for dental laboratories to advertise their products and services to their only lawful customers, licensed dentists, we respectfully submit that the amendment to Section 5a here in question does not impair the freedom of speech of Appellants and does not in any way close the door to a great variety of advertising media in which Appellants can reach their legitimate market. It places restrictions only in limited areas as determined by the General Assembly to be in the interests of public health and welfare.

(b) The Previous Opinions of This Court Eliminate Any Substantial Federal Question in the Present Case.

The argument by Appellants that Section 5a of the Illinois Dental Practice Act, as amended in 1959, impairs their freedom of speech, and that it deprives them of due process of law and equal protection of the law, presents now no substantial Federal question in view of an unbroken line of cases decided by this Court on similar and related statutes.

Semler v. *Oregon State Board of Dental Examiners*, 294 U. S. 608 (1935): Oregon dental practice act which prohibits certain types of advertising by dentists held not violative of the Federal Constitution.

The Court, by Mr. Chief Justice Hughes, said (p. 611):

> "That the State may regulate the practice of dentistry, prescribing the qualifications that are reasonably necessary, and to that end may require licenses and establish supervision by an administrative board,

is not open to dispute. *Douglas* v. *Noble*, 261 U. S. 165; *Graves* v. *Minnesota*, 272 U. S. 425. The State may thus afford protection against ignorance, incapacity and imposition. *Dent* v. *West Virginia*, 129 U. S. 114; *Graves* v. *Minnesota*, *supra*."

The Court said further (p. 612):

"The community is concerned with the maintenance of professional standards * * * the community is concerned in providing safeguards not only against deception, but against practices which would tend to demoralize the profession by forcing its members into an unseemly rivalry which would enlarge the opportunities of the least scrupulous."

Barsky v. *Board of Regents of New York*, 347 U. S. 442 (1954): The State may constitutionally provide for the suspension of a physician's license because of his conviction in a foreign jurisdiction for an offense not involving moral turpitude and not criminal under the law of the State.

The Court said (p. 449):

"It is elemental that a state has broad power to establish and enforce standards of conduct within its borders relative to the health of everyone there. It is a vital part of the state's police power. The state's discretion in that field extends naturally to the regulation of all professions concerned with health."

Williamson v. *Lee Optical Co. of Oklahoma*, 348 U. S. 483 (1955): It is not unconstitutional for the State to require the written prescription of a licensed opthalmalogist or optometrist to fit lenses to a face or to duplicate or replace into frames lenses or other optical appliances. Nor is it unconstitutional to subject opticians to a regulatory system and to exempt therefrom all sellers of ready-to-wear glasses. It is not unconstitutional to make unlawful the solicitation of the sale of frames, mountings,

or any other optical appliances. Lastly, the provision of the Oklahoma Act is not unconstitutional in prohibiting a retailer of merchandise dealing with the general public from renting space, subleasing departments, or otherwise permitting any person purporting to do eye examination or visual care to occupy space in such retail store.

The Court, by Mr. Justice Douglas, said (p. 487):

> "But it is for the legislature, not the courts, to balance the advantages and disadvantages of the new requirement."

The Court said further (p. 488):

> "It is enough that there is an evil at hand for correction, and that it might be thought that the particular legislative measure was a rational way to correct it.
>
> "The day is gone when this Court uses the Due Process Clause of the Fourteenth Amendment to strike down state laws, regulatory of business and industrial conditions because they may be unwise, improvident, or out of harmony with a particular school of thought."

Amsel v. *Brooks*, 348 U. S. 880 (1954):

> "Per curiam: The appeal is dismissed for the want of a substantial Federal question."

This case below is reported in 141 Conn. 288, 106 A. 2d 152 (1954).

In the *Amsel* case the statutory definition of the practice of dentistry was almost identical with that contained in the Illinois Dental Practice Act. The Connecticut statute prohibited all direct dealing with the public. Its validity was challenged on the ground that it constituted an uncontrolled and arbitrary interference with the dental laboratory's right to carry on a lawful business, in violation of Section 1 of the Fourteenth Amendment of the Federal Constitution.

Under the Connecticut statute the forbidden acts include delivery of a dental appliance to anyone but the dentist under whose supervision the work was done.

The Connecticut Supreme Court of Errors held (106 A. 2d 157):

> "No one has an inalienable right to pursue a profession or vocation which requires special knowledge or peculiar skill and is therefore a proper subject for supervision in the interest of the public welfare."

The Connecticut court held the statutory intent to be clear, that the acts in question were prohibited to a layman unless under the supervision and with the approval of a licensed dentist, and that this was not an unreasonable or arbitrary exercise of police power. As stated, this court dismissed an appeal in the *Amsel* case for want of a substantial Federal question.

People ex rel. Chicago Dental Society v. *A. A. A. Dental Laboratories, Inc.*, 352 U. S. 863 (1956):

> "Per curiam: The motion to dismiss is granted and the appeal is dismissed for want of a substantial Federal question." (Rehearing denied, 352 U. S. 919.)

This case below is reported in 8 Ill. 2d 330, 134 N. E. 2d 285 (1956).

In the *Chicago Dental Society* case, the validity of Section 5a of the Illinois Dental Practice Act as it applied to display advertising by dental laboratories in the Chicago Red Book was challenged as depriving the dental laboratory Appellants of due process of law and equal protection of law.

Appellants there contended that although one of the laboratory technicians by the name of Dorner was shown to have had display advertising in the Chicago Red Book, his advertising was directed to the dental profession and

that there was no evidence that he dealt directly with the public, and therefore he should not be enjoined.

This same argument is made in the instant case (Appellants' Jurisdictional Statement, p. 7). The Supreme Court of Illinois held, as to Dorner, at page 339:

> "While there is no evidence showing that this defendant dealt directly with the public, his advertising activities clearly show a purpose to do so, and in our opinion justify a decree restraining him from dealing directly with the public. The decree, so far as it relates to Dorner's advertising, and insofar as it fails to enjoin him from dealing directly with the public, is erroneous."

The same was held as to three other defendants, including one whose Red Book advertisement consisted of only four lines, three of which comprised the name, address and telephone number, and the fourth line consisted of the words: "Repairing—One Hour Service".

The Supreme Court of Illinois held that such advertising was directed to the public and indicated an intention to deal with the public. Appellants here seek to publish advertisements which exceed in both size and copy some of the advertising of defendant laboratories in the *Chicago Dental Society* case.

The basic approach to the questions here raised by Appellants was stated by the Supreme Court of Illinois in the *Chicago Dental Society* case, as follows, at page 334:

> "We emphasize at the outset that decision does not depend on our appraisal of the wisdom of the enactment, and that 'it is for the legislature, not the courts, to balance the advantages and disadvantages of the new requirement.' (*Williamson* v. *Lee Optical of Oklahoma, Inc.*, 348 U. S. 483, 487). That we might regard certain provisions as unnecessary is immaterial if they can be said to be reasonably related to a legitimate legislative concern."

As stated, this court dismissed an appeal in the *Chicago Dental Society* case for want of a substantial Federal question.

CONCLUSION.

Since the present case involves statutory regulation by a state of a profession directly related to public health, which regulation has been held by the Supreme Court of that state to be reasonable and in the public interest, and in view of the prior decisions of this Court, referred to above, it is evident that no substantial Federal question is involved and this appeal should be dismissed or, in the alternative, the judgment of the Supreme Court of Illinois should be affirmed.

Respectfully submitted,

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Intervenors-Appellees.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS.

BRIEF IN OPPOSITION TO MOTION TO DISMISS APPEAL OR TO AFFIRM JUDGMENT.

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MAY IT PLEASE THE COURT:

The principal question presented by this appeal is whether appellants have been denied rights secured under the First Amendment to the United States Constitution. It is

appellants' position that the amendment to Section 5a of the Illinois Dental Practice Act unjustifiably deprives them of their pre-existing freedom to advise their lawful customers of relevant facts about their business through printed media of their own choosing. Intervenors-appellees' ("appellees") motion entirely overlooks this question. The issue to be decided, should the Court grant a hearing on the merits, does not relate to whether the dental profession has benefited by the challenged amendment.

Except for *Amsel* v. *Brooks*, 141 Conn. 288, 106 Atl. 2d, 152 (1954), none of the cases cited by appellees considered the extent to which the State may impose a prior restraint on a businessman's freedom to communicate with his customers.

In the *Amsel* case, dental laboratory technicians brought suit for a declaratory judgment seeking to invalidate the Connecticut Dental Practice Act because of the provision which prohibited advertising even though the dental laboratory did not offer services to the public. The Court held this provision invalid:

> "* * * The language of this prohibition is all inclusive. The advertising prohibited is not limited to that which would announce a willingness to render services in controvention of the law. * * *
>
> * * * * *
>
> "* * * If this law is valid, those in the business generally performed in a dental laboratory are prohibited from doing anything to make known the availability of their services. * * * The connection between such a drastic and unreasonable regulation and the public welfare is so tenuous that * * * the portion of the statute relating to advertising cannot be legally justified. We hold the portion to be unconstitutional" 141 Conn. at ....., 106 Atl. 2d at 158.

Appellants have selected the Chicago Red Book as the media wherein they seek to make known the availability of

their services. The evidence is undisputed that the use of this publication is both effective and economical. There is no evidence to show that appellants' announcements therein are directed at anyone but licensed dentists. The mere use of a telephone directory does not establish that appellants' announcements offer services to the public.

It does not follow that because the Red Book circulates among the public generally, each and every listing therein is directed at the general public. Clearly, the general public does not read the 2,330 pages contained in that directory.

When appellants' announcements are examined, it becomes clear that they do not offer services to the public. They merely advise their customers of such facts as "change of management, change in name, former location, hours of business, speed and efficiency of service, number of years in business, experience of personnel, type of materials used and the like" (Juris. State., 8).

Appellees contend that it is immaterial in any event whether appellants utilize the Chicago Red Book since the statute permits them to advertise in trade journals and professional publications (Br., 7). Appellants do not consider it immaterial whether they may be permitted to make their own choice of advertising media. The record is barren of any proof to show that trade journals or professional publications are an effective or economical substitute for the Red Book. Moreover, the challenged parts of the statute insofar as they prohibit advertising in the Red Book while permitting it in other publications make an arbitrary and unjustified classification.

Appellants concede that the State may prohibit advertising *offering* their services to the public. The amendment to the Dental Practice Act, however, prohibits any and all communications with the public whether services are offered or not. This amendment bears no reasonable relation to the protection of public health.

The motion of appellees does not discuss the substantial question presented—namely, whether the curtailment of appellants' individual right to choose media in which to announce legitimate facts about their lawful business is a denial of their right to speak freely within the First Amendment.

In fact, appellees conclude their argument with the assertion that the present case involves statutory regulation of a profession directly related to public health (Br., 16). The validity of the regulation of dentistry is not involved. What is involved is the validity of regulation detailing the scope, form and content of advertising by businessmen conducting a lawful and legitimate trade. This question has not heretofore been considered by the Court.

WHEREFORE, it is respectfully requested that appellees' motion be denied for the reason that the Court has jurisdiction of this appeal, and should exercise such jurisdiction in this cause.

Respectfully submitted,

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